

### **35A-4-502 Administration of Employment Security Act.**

- (1)
  - (a) The department shall administer this chapter through the division.
  - (b) The department may make, amend, or rescind any rules and special orders necessary for the administration of this chapter.
  - (c) The division may:
    - (i) employ persons;
    - (ii) make expenditures;
    - (iii) require reports;
    - (iv) make investigations;
    - (v) make audits of any or all funds provided for under this chapter when necessary; and
    - (vi) take any other action it considers necessary or suitable to that end.
  - (d) No later than the first day of October of each year, the department shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make any recommendations for amendments to this chapter as the department considers proper.
  - (e)
    - (i) The report required under Subsection (1)(d) shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the division in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.
    - (ii) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the Legislature and make appropriate recommendations.
- (2)
  - (a) The department may make, amend, or rescind rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) The director of the division or the director's designee may adopt, amend, or rescind special orders after appropriate notice and opportunity to be heard. Special orders become effective 10 days after notification or mailing to the last-known address of the individuals or concerns affected thereby.
- (3) The director of the division or the director's designee shall cause to be printed for distribution to the public:
  - (a) the text of this chapter;
  - (b) the department's rules pertaining to this chapter;
  - (c) the department's annual reports to the governor required by Subsection (1)(e); and
  - (d) any other material the director of the division or the director's designee considers relevant and suitable and shall furnish them to any person upon application.
- (4)
  - (a) The division may delegate to any person so appointed the power and authority it considers reasonable and proper for the effective administration of this chapter and may bond any person handling money or signing checks under this authority.
  - (b) The department may, when permissible under federal and state law, make arrangements to voluntarily elect coverage under the United States Civil Service Retirement System or a comparable private retirement plan with respect to past as well as future services of individuals employed under this chapter who:
    - (i) were hired prior to October 1, 1980; and

- (ii) have been retained by the department without significant interruption in the employees' services for the department.
- (c) An employee of the department who no longer may participate in a federal or other retirement system as a result of a change in status or appropriation under this chapter may purchase credit with the employee's assets from the federal or other retirement system in which the employee may no longer participate in a retirement system created under:
  - (i) Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act for a purchase made under this Subsection (4)(c) by an employee eligible for service credit under Title 49, Chapter 13, Public Employees' Noncontributory Retirement Act; or
  - (ii) Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act, for a purchase made under this Subsection (4)(c) by an employee eligible for service credit under Title 49, Chapter 22, New Public Employees' Tier II Contributory Retirement Act.
- (5) There is created an Employment Advisory Council composed of the members listed in Subsections (5)(a) and (b).
  - (a) The executive director shall appoint:
    - (i) not less than five employer representatives chosen from individuals recommended by employers, employer associations, or employer groups;
    - (ii) not less than five employee representatives chosen from individuals recommended by employees, employee associations, or employee groups; and
    - (iii) five public representatives chosen at large.
  - (b) The executive director or the executive director's designee shall serve as a nonvoting member of the council.
  - (c) The employee representatives shall include both union and nonunion employees who fairly represent the percentage in the labor force of the state.
  - (d) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.
  - (e)
    - (i) Except as required by Subsection (5)(e)(ii), as terms of current council members expire, the executive director shall appoint each new member or reappointed member to a four-year term.
    - (ii) Notwithstanding the requirements of Subsection (5)(e)(i), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.
  - (f) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
  - (g) The executive director shall terminate the term of any council member who ceases to be representative as designated by the council member's original appointment.
  - (h) The council shall advise the department and the Legislature in formulating policies and discussing problems related to the administration of this chapter including:
    - (i) reducing and preventing unemployment;
    - (ii) encouraging the adoption of practical methods of vocational training, retraining, and vocational guidance;
    - (iii) monitoring the implementation of the Wagner-Peyser Act;
    - (iv) promoting the creation and development of job opportunities and the reemployment of unemployed workers throughout the state in every possible way; and
    - (v) appraising the industrial potential of the state.

- (i) The council shall assure impartiality and freedom from political influence in the solution of the problems listed in Subsection (5)(h).
  - (j) The executive director or the executive director's designee shall serve as chair of the council and call the necessary meetings.
  - (k) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
  - (l) The department shall provide staff support to the council.
- (6) In the discharge of the duties imposed by this chapter, the division director or the director's designee as designated by department rule, may in connection with a disputed matter or the administration of this chapter:
- (a) administer oaths and affirmations;
  - (b) take depositions;
  - (c) certify to official acts; and
  - (d) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records necessary as evidence.
- (7)
- (a) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the director of the division or the director's designee shall have jurisdiction to issue to that person an order requiring the person to appear before the director or the director's designee to produce evidence, if so ordered, or give testimony regarding the matter under investigation or in question. Any failure to obey that order of the court may be punished by the court as contempt.
  - (b) Any person who, without just cause, fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in that person's power to do so, in obedience to a subpoena of the director or the director's designee shall be punished as provided in Subsection 35A-1-301(1)(b). Each day the violation continues is a separate offense.
  - (c) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (8)
- (a) In the administration of this chapter, the division shall cooperate with the United States Department of Labor to the fullest extent consistent with the provisions of this chapter and shall take action, through the adoption of appropriate rules by the department and administrative methods and standards, as necessary to secure to this state and its citizens all advantages available under the provisions of:
    - (i) the Social Security Act that relate to unemployment compensation;
    - (ii) the Federal Unemployment Tax Act; and
    - (iii) the Federal-State Extended Unemployment Compensation Act of 1970.
  - (b) In the administration of Section 35A-4-402, which is enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26 U.S.C. 3304, the division shall take any action necessary to ensure that the section is interpreted and applied to meet the requirements of the federal act, as interpreted by the United States Department of Labor and to secure to this state the full reimbursement of the federal share of

extended and regular benefits paid under this chapter that are reimbursable under the federal act.

Amended by Chapter 439, 2011 General Session